IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.2335 OF 2005

The Regional Director
Employees' State Insurance
Corporation, Mumbai. ...Appellant
Vs.
M/s.Sadanand Textiles ...Respondents

Mr.H.V.Mehta for Appellant
None for Respondents

CORAM: SMT. ROSHAN DALVI, J.
DATED: 12TH APRIL, 2007

P.C.

1. This Appeal challenges the order dated 2nd December, 2004 of the Judge of the Employees Insurance Court, Mumbai, allowing the application of the Employers and holding that the order impugned in that Application was barred by limitation under Section 45-A of the Employees State Insurance Act, 1948 (E.S.I.Act).

2. Notice has been issued upon the Respondents, that the Appeal shall be heard and disposed off at the stage of

admission itself. Advocate for the Appellant has also issued separate notice which has been received by the Respondents on 14th March, 2007. The case is entirely covered by the Judgment of the Apex Court in the case of ESI Corporation Vs. C.C.Santhakumar,(2007) 1 SCC, 584. It has been held in para 14 of that judgment, upon considering Section 45 r.w. Sections 68 and 77 of the Act and Chapter IV of the Act that there is no limitation prescribed in Section 45. Section 38 imposes obligation upon the employer to pay contribution and, upon his failure, he is liable to pay interest on a recurring basis until it is fully paid. Consequently it is held in para 16 that the limitation prescribed under Section 77 does not get attracted. The non-payment of contribution is a continuing cause which is clear from the fact that the employer is enjoined to pay interest.

3. In view thereof, the application cannot be disposed off on the preliminary issue of limitation as has been done by the learned Judge in the impugned order. The application is therefore, remanded to the Employees State Insurance Court for disposal on merits.

4. The Appeal is disposed off accordingly.

5. Copy of the letter of the Appellant' sAdvocate showing service of the papers upon the Respondents is kept on record.

(SMT.ROSHAN DALVI, J.)